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**Oral Statement on behalf of
UNHCR, UNICEF, OHCHR, UNIFEM, UNODC, and ILO
Delivered at the seminar on
Combating and preventing trafficking in human beings: The way forward**

**Jointly organized by the Committee on Civil Liberties, Justice and Home Affairs
And the Committee on Women's Rights and Gender Equality**

European Parliament

10 June 2010

Mesdames Presidents,
Distinguished Members
Ladies and Gentlemen,

I have the honour to deliver this statement today on behalf of six UN agencies, namely UNHCR, UNICEF, OHCHR, UNIFEM, UNODC, and ILO. We have worked together to reach a common position on the European Commission proposal for a Directive on trafficking in human beings. Our joint letter covers the main points of relevance to our respective agencies and mandates in the context of trafficking; it provides for brief background explanatory notes to the various issues addressed and makes recommendations, which we hope you will find useful in your work. Our joint letter is available to you at the entrance to this room and on the internet.

Today I will focus on some of the most pressing issues highlighted in our collective response. As UN agencies, we value the efforts and the interest of EU Member States in combating trafficking in persons, a crime which results in serious violations of the human rights of its victims. In this context, we welcome the proposal for a Directive on preventing and combating trafficking, and in particular the objective of protecting, assisting and supporting victims. This Directive would represent an important

development which would help ensure that the rights of victims of trafficking are effectively addressed in binding European Union rules.

Victim protection

Behind the hideous crime of human trafficking, there are victims, victims who need protection, assistance and support. This is why we welcome the expressed intention for this Directive to address victim protection as well as to fight trafficking, which represents a positive development moving beyond the 2002 Framework Decision. Not one conference on trafficking goes by without participants calling for a holistic approach to trafficking, involving the so-called 3 “P”s (Prevention, Prosecution, Protection). This Directive is the opportunity for the European Union to adopt this holistic approach in its rules and to strengthen it by monitoring. I will come back later to the point on monitoring. Just a few days ago, the UN Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ezeilo, recalled at a session of the Human Rights Council, that “any efforts to combat trafficking must be anchored in a human rights approach.”

The proposal however, does bring forward limitations on protection measures. Such protections, in the current text, are only afforded in the framework of criminal investigation and proceedings (reference here is made to Article 11), despite the announced objective to “establish specific protective measures for any victim of trafficking in human beings”. We hope that the Parliament and Council will be ready to remove these limits on protection measures in the Directive.

The principle of *non-refoulement*

In particular, we consider it essential to reiterate, in the text, the fundamental principle of *non-refoulement*, which binds the European Union and all Member States under the terms not only of the 1951 Refugee Convention, but also the European Union Charter of Fundamental Rights and other relevant treaties. Let me here specifically draw your

attention to Article 19 of the EU Charter on protection in the event of removal, expulsion or extradition, which re-affirms the principle of *non-refoulement* i.e. ensuring that nobody is sent back to persecution. So we call for an explicit reference in the preamble of the Directive to the principle of *non-refoulement*, and to the fact that this Directive should apply without prejudice to the 1951 Refugee Convention.

The assessment of the protection needs of trafficked persons will determine the protection response and the best solution available for each case. Depending on the case and the prevailing circumstances in the country of origin, voluntary repatriation could be one of the solutions, but should not be seen as the only one. Recognition of refugee status or subsidiary protection as per Article 15 of the EU Qualification Directive will be an important component of protection response for certain trafficked persons.

National referral mechanisms

But protection is only possible if there are established National Referral Mechanisms, as recommended by the EU Expert Group on Trafficking, aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organizations. Here we note with appreciation the proposed Article 10 (4).

In a study commissioned by UNHCR on the identification and referral of trafficked persons to protection procedures, published in October 2009, a number of gaps in State practice were highlighted in relation to ensuring complementarity between the procedures for victims of trafficking and international protection systems. We therefore encourage a reference to cooperation between enforcement authorities and asylum authorities, and referral mechanisms for persons in need of international protection.

Training

National Referral Mechanisms can only be effective if officials likely to come into contact with victims of human trafficking are trained. We therefore welcome the

provision on regular training in Article 15 of the Directive proposal , in particular the training of border guards, labour inspectors, judges, and social and health care personnel. This wide scope of training is essential, given the broad range of situations in which trafficked victims can be identified, and protection and assistance mechanisms which are required.

Free legal counseling

In our view, the right to free legal assistance is critical for protection to be accessible in practice, especially in complex European procedures. Victims of trafficking are often unable to articulate cogently the elements relevant to their account without the assistance of a qualified legal counselor. Free quality legal assistance provided as soon as the person has been identified as a victim of human trafficking, is in the interest of States, as it can help to ensure that protection needs are identified early and accurately and secure voluntary participation in criminal investigation and proceedings.

Non-Prosecution of Victims

Let me now turn to the non-prosecution of victims of human trafficking in Article 7, an essential point of the proposal. We would like to express our serious concerns that the proposed provision only refers to the “possibility of not prosecuting or imposing penalties”. We use this opportunity to recall the OHCHR *Principles and Guidelines on Human Rights and Human Trafficking*: “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.” Today, we call for the mandatory non-prosecution of and non-application of penalties to victims for their involvement in unlawful and criminal activities they have been compelled to commit against their will.

Particularly vulnerable persons

Because women and girls represent the overwhelming majority of exploited persons as a result of trafficking in human beings, and because the gender of (potential) victims of trafficking constitutes an additional factor of vulnerability for these persons, we welcome the definition provided in the Preamble for the concept of “particularly vulnerable persons.” However we encourage you to adopt an approach based on equality and women’s empowerment, in particular by including vulnerability on grounds of gender in this definition.

95% of victims experience physical or sexual violence during trafficking. For this reason, we also call for the extension of gender-sensitive rights-based standards of assistance and support to persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. We encourage you to provide for special assistance and support to address the specific needs of particularly vulnerable persons.

Most provisions in the proposal are of a generic nature, addressing the male and female experience of trafficking in the same way, whereas men and women, boys and girls experience trafficking differently. Women and girls tend to suffer a disproportionately heavy impact, whereas trafficked men find it difficult to access existing programmes for victim assistance. We therefore call on gender equality and women’s empowerment perspectives to be incorporated in the formulation and implementation of legislation and programmes, and for gender-sensitive training to be institutionalized for all stakeholders.

Data collection and monitoring

Let me now return to the point on monitoring. The need to collect better quality data on human trafficking is regularly stressed by all stakeholders, as is the lack of comparable data. This is the opportunity for the EU to introduce in its rules the requirement for systematic and harmonized data collection by Member States.

We welcome the proposal to establish National Rapporteurs or equivalent mechanisms. In addition to national monitoring and reporting mechanisms, we consider that the European Union would benefit from the appointment of an EU Anti-Trafficking Rapporteur, in order to support a coherent approach across Member States, allow for effective and visible action against human trafficking at EU level, and provide for a monitoring and reporting system to the EU institutions.

Protection of child victims of trafficking

Mesdames Presidents,

This statement would not be complete without a mention of the strengthened protection afforded by this proposal to child victims of trafficking, and the primacy accorded to the best interest of the child, which we very much welcome. We would like to seize this opportunity to encourage Parliament and the Council to consider further provisions on the best interest of the child involving the search for durable solutions for child victims, whether this is integration into society in an EU Member State or reunification with their families. The recently released Action Plan on Unaccompanied Minors for instance calls for increased protection for trafficked children and support to child protection systems in countries of origin.

Let me end by reiterating our readiness and willingness to continue our collaboration with the European Union institutions in the further development of a response to trafficking in human beings within our respective areas of expertise. We very much hope that our recommendations will be of help to you as you continue addressing the challenges faced by victims of human trafficking.

I thank you all for your kind attention.